

Appl. No. 10/678,206  
Atty. Docket No. 9049  
Amdt. dated September 13, 2007  
Reply to Office Action of June 13, 2007  
Customer No. 27752

#### REMARKS

Claims 1 and 4-16 are pending in the present application. Claims 2-3 were previously cancelled. No additional claims fee is believed to be due.

Claim 1 has been amended as shown above. Support for this amendment can be found in the original claim 1, in the specification at page 5, lines 4-15, and in Figures 6-7.

It is believed these changes do not involve any introduction of new matter. Consequently, entry of these changes is believed to be in order and is respectfully requested.

#### Rejections Under 35 USC 103(a) Over U.S. Patent No. 2,480,023 to Holden

Claims 1, 4-11, 14, and 15 are rejected under 35 USC 103(a) as being unpatentable over U.S. Patent No. 2,480,023 to Holden ("Holden"). The Examiner asserts that Holden discloses a hair treatment applicator (figs. 1-3) comprising a handle (10 via member 12) having a longitudinal axis and being in an elongated form; a plurality of retaining structures or heads (28) connected to the handle, each of the plurality of retaining structures having a base (at 26) and a plurality of tines (30) and is *capable of holding hair treatment*, wherein the base facing in a direction substantially parallel to that of each other retaining structures and each of said plurality of tines extends substantially perpendicular from the base (see fig. 1); wherein each of the retaining structures being separated from each other *by a separation volume* (space between the two retaining structures).

Applicants respectfully traverse the present rejection based on the following comments. Specifically, the Office has failed to establish a prima facie case of obviousness based on Holden because Holden does not teach or suggest all of the Applicants' claim limitations.

Contrary to the assertions of the Office, Holden does not teach or suggest all of Applicants' claim limitations and, therefore, does not establish a prima facie case of obviousness. Applicants' claim 1 is directed to a hair treatment applicator for applying a hair treatment to hair. As currently amended, this hair treatment applicator comprises a handle, a plurality of retaining structures connected to the handle, each of the plurality of retaining structures comprising a base and a plurality of tines and being configured for holding the hair treatment, and a separation volume separating each of the retaining structures from each other of the plurality of retaining structures. In contrast, the disclosure of Holden fails to disclose a hair treatment applicator having a handle, retaining

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structures configured for holding hair treatment, and a separation volume separating each of the retaining structures from each other of the retaining structures.

Holden is directed to a massage brush for use with a bath spray or with a liquid applicator for dispensing hair tonic. When used with a bath spray, the massage brush is "applied to a portable bath spray which includes a hollow metallic spray head (10) connected to a flexible hose or tube (12)." (Holden, column 1, lines 50-55). When used with a liquid applicator, however, the "brush is fitted onto the head or cap of a suitable container from which the liquid is dispensed." (Holden, column 2, lines 44-50). The Office asserts that "Holden discloses a hair treatment applicator (figs. 1-3) comprising a handle (10 via member 12) . . . ." (Office Action, page 2). This "handle (10 via member 12)[,]" however, is not present when the Holden massage brush is used with a liquid applicator to dispense hair tonic. Rather, as noted above, the massage brush is fitted *directly* onto the head of a container from which the liquid is dispensed. The hair tonic would then be dispensed through the "holes (24) in the base of the massage brush (14) [that] are interspersed between the nubs (28)" of the brush.

The holes (24) in the base (26) of the Holden massage brush are interspersed between the nubs (28) of the brush, which extend from the base (26) of the massage brush. (Holden, column 2, lines 14-20). The nubs are thus configured such that they do not interfere with proper spray discharge from the attached container of liquid. Each nub is also covered with multiple tips (30) or "small fingers" that are arranged close together (Holden, column 1, lines 25-31 and figures 2 and 3). The nubs (28) are configured to maximize the massage benefit of the brush. The nubs (28) of the massage brush are not configured for holding hair treatment. Furthermore, the massage brush does not include separation volumes.

The present invention requires a separation volume to allow a section of hair to pass through the hair treatment applicator *without being treated*. The nubs (28) of the Holden device are not separated by separation volume. On the contrary, the nubs are separated by portions of base that *include holes*, through which hair treatment spray is discharged from the attached container of hair treatment. Such a construction is necessary if the massage brush is fitted *directly* onto the head of a container from which liquid hair treatment is dispensed. Such a construction, however, is inconsistent with the operation of the present invention. Specifically, such a construction would make it difficult if not

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impossible to hold the hair treatment or control where it is applied, i.e., provide for separation between treated and untreated hair.

Holden thus fails to disclose a hair treatment applicator having a handle, retaining structures configured for holding hair treatment, and a separation volume separating each of the retaining structures from each other of the retaining structures. The Holden patent fails to teach or suggest all of Applicants' claim limitations and, therefore, it does not establish a prima facie case of obviousness. With respect to claims 4-11 and 14-15, an argument analogous to that made with respect to claim 1 can be made because claims 4-11 and 14-15 depend directly or indirectly from claim 1. Consequently, Applicants' claims 1, 4-11, and 14-15 are patentable over Holden.

Rejections Under 35 USC 103(a) Over WO 00/69308

Claims 1, 12, and 13 are rejected under 35 USC 103(a) as being unpatentable in view of WO 00/69308 (the '308 application). Claim 16 also appears to be rejected over the '308 application. The Office asserts that the '308 application discloses a hair treatment applicator (figs. 3 and 4) comprising a handle (1) having a longitudinal axis and being in an elongated form; a plurality of retaining structures or heads (at 5) connected to the handle, each of the plurality of retaining structures having a base (4) and a plurality of tines (5) and being configured for holding hair treatment; wherein the base facing in a direction substantially parallel to that of each other retaining structures and each of said plurality of tines extends substantially perpendicular from the base; wherein each of the retaining structure being separated from each other by a separation volume (10) and wherein the hair treatment is contained in each of the plurality of retaining structures and is not contained in the separation volume.

Applicants respectfully traverse the present rejection based on the following comments. Specifically, the '308 application does not disclose each and every element of Applicants' claimed hair treatment applicator and, thus, does not establish a prima facie case of obviousness.

Each of claims 1, 12, 13, and 16 requires a separation volume separating each of the retaining structures from each other of the plurality of retaining structures. The Office asserts that the '308 application discloses retaining structures separated from each other by a separation volume (10). The Applicants' respectfully submit that the '308 application teaches guiding prongs (10), not a separation volume. The present invention requires a

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separation volume to allow a section of hair to pass through the hair treatment applicator without being treated.

Furthermore, the hair treatment applicators of claims 1, 12, 13, and 16 comprise handles having longitudinal axes and being molded from one or more plastic materials in an elongated form. The elongated form of the handle allows a user to grasp the hair treatment applicator in his or her hand for good control and maximum comfort in its use. In contrast to the claimed hair treatment applicators, the application device of the '308 application does not comprise a handle at all. Instead, the '308 application relates to an "application device which is configured in such a way that said device can be mounted on the opening of a container that receives or contains hair dyeing agents." The '308 application does not disclose a handle in an elongated form, which can be grasped in the hand of a user during use.

Thus, as it fails to disclose each and every element of Applicants' claimed hair treatment applicators, the '308 application does not establish a prima facie case of obviousness. Therefore, Applicants' claims 1, 12, 13, and 16 are patentable over the '308 application.

#### CONCLUSION

In light of the amendments and remarks presented herein, it is requested that the Office reconsider and withdraw the present rejections. Early and favorable action in the case is respectfully requested.

Applicant has made an earnest effort to place their application in proper form and to distinguish the invention as now claimed from the applied references. In view of the foregoing, Applicant respectfully requests reconsideration of this application and allowance of Claims 1 and 4-16.

Respectfully submitted,  
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